

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Antoine Eggleston,

Case No. 21-cv-1643 (ECT/LIB)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

B. Birkholz and Michael Carvajal,

Respondents.

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This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, and upon Petitioner Antoine Eggleston's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. [Docket No. 1].

In an Order dated August 12, 2021, this Court ordered Petitioner to submit either this matter's filing fee or an application to proceed in forma pauperis ("IFP"). (Order [Docket No. 5]). Petitioner was given until September 3, 2021, to submit the fee or application. (*Id.*). Petitioner was forewarned that if he failed to comply with this Court's directive, then it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See*, Fed. R. Civ. P. 41(b).

Petitioner's deadline has now passed, and Petitioner has not submitted a filing fee or IFP application. In fact, Petitioner has not communicated with the Court about this case at all since commencing it. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: September 24, 2021

s/Leo I. Brisbois  
Hon. Leo I. Brisbois  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).